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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

NO. 864

F. F. DOLLERT, ET AL,  
Petitioners  
v.

PRATT-HEWITT OIL CORPORATION, ET AL  
Respondents

PETITION FOR REHEARING

ARTHUR H. BARTELT  
Attorney  
Austin, Texas  
DANIEL W. HOAN  
Milwaukee, Wisconsin and  
LUTHER M. BICKETT  
San Antonio, Texas  
Of Counsel



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*To the Honorable Chief Justice of the United  
States and the Justices of the Supreme  
Court of the United States:*

In our judicial system, as set up in the Constitution of the United States, it certainly was the intention of the makers of that instrument that in some court every litigant in good faith should have

the constitutional right to have a judicial determination of the issue or issues presented by him in his pleadings filed in a court of Justice. Then, too, it was equally the intent of the makers of the Constitution that when the trial courts which have jurisdiction to pass upon the merits of the pleadings have failed in their duty and have not accorded the litigant his constitutional rights, that is, have not judicially determined the issues presented, there should be a Supreme Court which could accord to the litigant the rights which are his under the Constitution of the United States. If this is not true, then Justice is dead.

This Honorable Court has been called truthfully the final guardian of the constitutional rights of the people. What does that mean if it does not guarantee to every citizen relief when the lower courts have erred in failing to pass upon issues of merit, with the result that one man's property is given to another? Does not such error of the trial courts give jurisdiction to this Honorable Court if it is the final guardian of the constitutional rights of the people? *Fayerweather v. Rich*, 195, U. S. 276.

Petitioner, in his pleadings filed in the courts, both state and Federal, has presented to those courts in good faith six jurisdictional and fundamental questions. These have never been answered or disputed by the defendants and have never been mentioned or judicially determined unless complete silence is a judicial determination.

The following are the six questions in substance presented by petitioner.

1. Does the September 28, 1925 contract, its validity being the subject matter of this litigation, unlawfully delegate the managerial powers of the Pratt-Hewit Corporation to the directors of the Houston Oil Company? For discussion of this see Application for Certiorari, pages 45-59.
2. Does that contract violate the Texas Usury Statute? For discussion of this see Application for Certiorari, pages 49-65.
3. Does the said contract violate the Anti-Trust and Anti-Monopoly Statutes of Texas? Appl. for Cert. pp. 65-71.
4. Is an officer of a corporation, while acting for that body, able to make a valid contract with another corporation when, at the same time, he is having secret financial dealings with that other corporation? See Appl. Cert., pages 71-75.
5. In a shareholders' action, does the plaintiff stockholder have the power at any time to dismiss the action with prejudice without first giving notice to all the stockholders? Is such a dismissal valid? Is it binding upon the corporation? Would not that alleged right deprive the other stockholders of their property,

namely, the right to prosecute the action to judgment, in violation of the 14th Amendment of the Constitution of the United States? Is not such judgment void on its face? *Hansberry v. Lee*, 311 U. S. 32. Appl. Cert. 75-82.

6. In a stockholders' action, where the dominant stockholder and official is a defendant, with the corporation also made a defendant because the officials of the corporation would not bring the action, may such dominant official and his private attorney represent the corporation in consenting to a dismissal of the action in which the corporation is the true plaintiff? Is not such judgment so entered void on its face, as against the corporation?

Petitioner wants definitely to be understood that he is basing his application for certiorari not upon an erroneous determination of the merits of these issues, but **solely** upon the fact that, contrary to his constitutional rights, there **never** has been a judicial determination upon the **merits** of these **issues** in **any court** and that this fact bestows jurisdiction upon this Honorable Court.

At no time has a single one of the defendants ever denied the facts upon which petitioner bases these issues, nor has a single defendant ever taken issue with the legal contentions of petitioner. The facts are admitted and the legal conclusions of petitioner are undisputed. Yet no court has ever

mentioned the issues or determined one of them unless silence is a judicial determination.

If silence on the foregoing issues constitutes a judicial determination, then let us see to what that leads.

It has always been an elemental, fundamental and universally adopted principle that when the jurisdiction of the court is attacked it becomes the duty of the court to stop all proceedings immediately until it affirmatively passes upon the question of its jurisdiction. The lower courts, although their jurisdiction was attacked, at no time ever passed upon that question. If silence is a judicial determination, have not these said lower courts overruled that foregoing principle of law procedure and made it possible for courts hereafter, when their jurisdiction is attacked, to ignore the same and proceed to render a judgment which they might be powerless to decree?

If silence is a judicial determination of questions such as petitioner's, then on Issue 1, where petitioner contends that the September 28, 1925 contract unlawfully delegates the managerial powers of the Pratt-Hewit Corporation to the directors of the Houston Oil Company, such silence overrules the Supreme Court of Texas in the case of Temple v. Dodge, et al, 89 Texas, 69, and also overrules the Circuit Court of Appeals of the United States (7th) in the case of Sherman and Ellis Inc. v. Indiana



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Mutual Gas Company et al, 41 Fed. 2d, 588. See Pet. Cert., 45-59 and particularly 57 and 58.

Likewise, each one of the other issues of petitioner could be taken and analyzed and if silence constitutes a judicial determination against petitioner, then every one of the Texas, Federal and other state cases cited by petitioner in support of each of his issues is overruled.

If courts can overthrow in effect long established principles without rendering an opinion, then that power would soon throw our whole judicial system into utter confusion.

The discretion vested in an appellate court, one which has power to pass upon the merits of the issues in the case, is not an absolute but a judicial discretion which in some instances is as mandatory as written language can express. It is petitioner's position that when the effect of an appellate court's decision is to overrule long standing principles, it is mandatory that it state its reasons.

If the position is taken that silence does not constitute a judicial determination, then petitioner's issues have never been passed upon, in violation of his and his corporation's constitutional rights.

Thus, whatever horn of the dilemma is taken, the jurisdiction of this Honorable Court attaches.

Furthermore, the Federal District Court and the

Circuit Court of Appeals of the United States did not pass upon any of these issues nor did they even mention them. They said that there was no fraud and therefore dismissed the action. Of course the issue of whether or not there was fraud is immaterial. This does not decide one of the issues presented to the courts by petitioner. That is glaringly obvious.

Even on the question as to whether Thomas H. Pratt had forfeited his right to represent his corporation in the making of the September 28, 1925 contract because of his undisputed extensive financial secret dealings with the Houston Oil Company, the issue of fraud is utterly immaterial, as the courts of Texas and of other jurisdictions have universally held. See Texas and Federal cases cited on Pages 80-82 in the Application for Certiorari.

The Court of Civil Appeals passed over entirely the issues presented to it and merely labeled petitioner's motion as a motion for new trial.

Each one of the foregoing courts begged the issue by assuming that the September 28, 1925 contract was legal.

The defendant Houston Oil Company, in all its briefs, has continually dwelled upon the defense that there was no fraud, as a conclusion arising from the dismissal of the case with prejudice on January 26, 1937, saying that this decision was res judicata as to whether there was or was not fraud. Consequent-

ly, the Houston Oil Company's briefs, pleadings, and what they do not say and have studiously avoided referring to show that petitioner's issues have never been passed upon by any court.

Inasmuch as petitioner has repeatedly called attention to and strenuously insisted that his issues have not been given a judicial determination by any court and his contentions have never been challenged by the defendants, **not even** an attempt has been made by the defendant to disprove the same and not **one** court before which these issues were raised has ever said that even one of these issues has been decided or even mentioned, does not petitioner have a right to feel that he has been denied his constitutional rights and his corporation's property has been confiscated and is still being confiscated by the oil and gas being taken out every day from under its leases by the Houston Oil Company? And does it not therefore also indisputably appear that the jurisdiction of this Honorable Court, the final guardian of petitioner's and his corporation's constitutional rights, **has attached?**

Respectfully submitted

ARTHUR H. BARTELT

Attorney  
Austin, Texas

DANIEL W. HOAN

Milwaukee, Wisconsin and

LUTHER M. BICKETT

San Antonio, Texas  
Of Counsel

CERTIFICATE OF ATTORNEY

I, one of the counsels for the above-named appellant, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

ARTHUR H. BARTELT  
Counsel for Appellants